

by a trust, to a similar trust, in connection with a refunding loan made by the lender pursuant to §1786.28(c)(3); or

(iii) As an undivided pro rata interest in a pool of obligations.

(6) The loan documentation shall provide RUS with the right to accelerate the note evidencing the private loan upon the occurrence of any "Event of Default" under the mortgage with the effect that all of the unpaid principal and interest on any such note shall become immediately due and payable to RUS, and RUS shall continue to pay under its guarantee the principal of and interest on such note without taking into account such acceleration. The loan documentation shall also provide RUS with a right, upon the occurrence of such an "Event of Default," to accelerate payment on its guarantee and accelerate payment on the note evidencing the private loan on the earlier of any date the interest rate on the private loan is reset, without premium or penalty; any date the borrower may prepay in accordance with the terms of the private loan, or the tenth anniversary of the date the private loan first bears interest at a fixed interest rate.

(7) The principal of the private loan shall not include amounts attributable to fees associated with the private loan. At the time it submits its application, a borrower may request that the Administrator approve the inclusion of amounts attributable to fees as part of the interest rate on the private loan, if the net effective interest rate including such fees meets the test contained in §1786.28(c)(1). For the purposes of these regulations, such financed fees shall be considered "interest".

(8) Private loans and guaranteed notes evidencing private loans shall otherwise be in form and substance satisfactory to the Administrator.

(d) *Prepayments Without a Guarantee.* Qualifying borrowers may elect to utilize internally generated funds without a guarantee to prepay an FFB loan, or partially prepay an FFB loan, pursuant to this subpart, if

(1) The borrower notifies RUS, of its intent to prepay using internally generated funds in accordance with the application procedures set forth in this subpart; and

(2) The borrower submits a certification to RUS that the prepayment does not, materially adversely affect the financial stability of the borrower and its ability to meet all its obligations, including debt service on all loans made, guaranteed or lien accommodated under the RE Act which will remain outstanding after the date of the prepayment.

(e) *The Use of both a Private Loan and Internally Generated Funds.* Qualifying borrowers may elect to utilize a combination of private loans and internally generated funds without a guarantee, to prepay an FFB loan pursuant to this subpart, if

(1) The private loans comply with the provisions of paragraph (c) of this section, and

(2) The borrower complies with paragraph (d) of this section.

(f) *FFB loans.* A borrower's FFB loans that qualify to be prepaid pursuant to this subpart are:

(1) *Qualifying Borrowers.* In the case of qualifying borrowers other than financially distressed borrowers, FFB advances with long-term maturity dates may be prepaid pursuant to this subpart; and

(2) *Financially distressed borrowers.* FFB loans that are eligible to be prepaid by utilizing the financially distressed borrowers' reserve are advances with long-term maturity dates, and which in the opinion of the Administrator, if prepaid, would result in an economic savings to the financially distressed borrower.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 35426, Aug. 30, 1990. Redesignated at 55 FR 49250, Nov. 27, 1990]

**§ 1786.29 Prepayment authority, program allocations, categories of prepayment applications and financially distressed borrowers' reserve.**

(a) *Prepayment Authority.* So long as the aggregate amount of prepayments made after December 22, 1987, including prepayments made pursuant to §1786.28(d) and §1786.28(e), under section 306(A) of the RE Act, does not exceed \$2.5 billion, the approval of the Secretary of the Treasury is not required in order to make a prepayment pursuant to this subpart (such amount

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of prepayments is hereinafter called prepayment authority).

(b) *Program Allocations.* In accordance with the provisions of section 637 of the 1989 Appropriations Act, \$350 million of prepayment authority is allocated to RUS-financed electric systems and \$150 million of prepayment authority is allocated to RUS-financed telephone utilities. The amounts of prepayment authority allocated to electric program borrowers and telephone program borrowers shall not be transferred between programs. Borrowers may not sell, assign, or otherwise transfer prepayment authority to another borrower.

(c) *Categories of Prepayment Applications.* Applications received by RUS from borrowers desiring to prepay pursuant to this subpart will be separated into the following two application categories:

(1) *Electric Program Applications.* Electric program applications are applications to make a prepayment pursuant to this subpart from RUS-financed electric utilities, that qualify in accordance with §1786.28(a) hereof and which are received by RUS during the application period. Electric program applications will be further subdivided and classified as being either (i) a financially distressed borrower's application, or (ii) a standard electric program application. Applications received from borrowers determined by the Administrator not to be a financially distressed borrower will be classified and processed as a standard electric program application;

(2) *Telephone Program Applications.* Telephone program applications are applications to make a prepayment pursuant to this subpart from RUS-financed telephone utilities that qualify in accordance with §1786.28(a) hereof and which are received by RUS during the application period;

(d) *Financially distressed borrowers' reserve.* The \$350 million of prepayment authority allocated for RUS-financed electric utilities, is initially set aside into a financially distressed borrowers' reserve. This reserve of prepayment authority will be available for prepayments pursuant to this subpart by financially distressed borrowers who apply to make such a prepayment during the application period. In the event

that a portion of financially distressed borrowers' reserve remains unsubscribed at the end of the initial application period, the unallocated portion of the financially distressed borrowers' reserve will be allocated to other electric borrowers having submitted applications during an application period to be announced by RUS. Such prepayment applications shall be classified as standard electric program applications.

[55 FR 1145, Jan. 11, 1990, as amended at 55 FR 35427, Aug. 30, 1990. Redesignated at 55 FR 49250, Nov. 27, 1990]

### § 1786.30 Processing procedure.

(a) *Priority of Processing.* The determination of the order or method in which applications or portions of applications will be processed by RUS pursuant to this subpart rests solely within the discretion of the Administrator. RUS expects that a number of prepayment applications will be processed simultaneously. In the event that it becomes necessary to establish priorities of processing, prepayment applications will be processed without regard to the date received, generally in the following order of priority:

(1) Applications from telephone borrowers;

(2) Applications from financially distressed borrowers;

(3) Applications from all other borrowers. When assigning priority to such applications, RUS will consider a number of factors, including without limitation, (i) the number of prepayment applications being processed by the area office; (ii) the novelty or complexity of the proposed transaction; (iii) the method of prepayment; and (iv) the availability of resources. In the event that RUS receives during the initial application period, prepayment applications from such borrowers in an amount less than remaining prepayment authority for each respective program, RUS will establish a new application period and publish a notice to that effect in the FEDERAL REGISTER.

(b) *Pro-rated Applications.* Standard electric program applications, and telephone program applications will be